

**BEFORE THE COMMISSION
ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

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|----------------------|---|----------------|
| RAYMOND RAMSAY |) | |
| |) | |
| Complainant |) | |
| |) | |
| vs. |) | Case No. 547-0 |
| |) | |
| BEL PRE RECREATIONAL |) | |
| ASSOCIATION, INC. |) | |
| |) | |
| Respondent |) | |
| |) | |

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 11th day of December, 2002, found, determined and ordered as follows:

BACKGROUND

Raymond Ramsay is a homeowner in the Bel Pre Recreational Association, Inc. The Bel Pre Recreational Association, Inc. is a homeowner's association responsible for the recreational facilities available for use by the member homeowners in the Strathmore at Bel Pre community in Silver Spring, Maryland. Historically, the recreational facilities at Bel Pre consisted of a swimming pool, tennis courts and a basketball court.

As early as 1994, minutes of the Association's Board of Directors¹ meetings reference trouble at the basketball court. The complaints regarding the basketball courts ranged from trespassing on residential lots to cursing, throwing trash on the ground and public urination.

¹ The Association's governing body is referred to as "Board of Directors" in the Articles of Incorporation but called "Board of Trustees" in the Bylaws and Declaration of Covenants, Restrictions, Easements, Charges and Liens. The distinction is not relevant to the issue before us and, for simplicity sake, the governing body will be referred to as the Board of Directors or the Board throughout this decision.

There is significant record evidence that these disruptions resulted in residents seeking police assistance.

In August 1995, the Board of Directors voted to “temporarily remove the backboards/hoops after Labor Day.” August 28, 1995, Board Minutes. Apparently the basketball hoops were reinstalled for the 1996 summer season. The record indicates that individuals² using the basketball court continued disrupt the community during the summer of 1996. At the annual meeting of the Association on November 20, 1996, there was a lengthy discussion concerning the trouble linked to the basketball court. A vote of the membership on a motion to reinstall the basketball hoops prior to the 1997 summer season ended in a tie, defeating the motion. After additional discussion, a second motion “to leave the hoops down until the summer ’98 season at which time the issue will be reevaluated,” passed. Minutes of the Annual Meeting, November 20, 1996.³

In October 1997, the Bel Pre Board of Directors sent out a survey seeking resident input regarding the basketball court issue. A strong majority (66%) of those responding (158 out of 703 homes) expressed a desire to leave the basketball hoops down. In 1998 and 1999, discussions regarding the basketball court took place during the annual meetings. The community decided to leave the basketball hoops down.

In November 2001, Mr. Ramsay filed a complaint with the Commission on Common Ownership Communities seeking to have the Commission rule that the Bel Pre Recreational Associations’s Board of Directors breached its fiduciary duty⁴ to the members by allowing the basketball court to remain closed, and further requested an order requiring the Board of Directors to “fence, refurbish, and reactivate the Common Area basketball court.” On January 28, 2002, Mr. Ramsay filed an amendment to the complaint seeking “payment of damages” in addition to the previously requested relief.

² At the hearing there was considerable discussion concerning whether the trouble makers were residents or non-residents. The panel did not address the question because it is not relevant to the decision.

³ Mr. Ramsay testified that he proposed this compromise motion during the meeting.

⁴ Boards of Directors of homeowners associations clearly have a fiduciary duty to the members of the community. However, Mr. Ramsay failed to meet his burden to show that there is a “fiduciary duty to manage, maintain, and operate the Common Area basketball court.” Complaint at 3.

FINDINGS OF FACT

1. Raymond Ramsay, complainant, is a homeowner residing at 13924 Blair Stone Lane, Silver Spring, MD 20906. This residence is located in the Bel Pre Recreational Association.
2. The Bel Pre Recreational Association, Inc. is a homeowner's association responsible for the recreational facilities available for use by the member homeowners in the Strathmore at Bel Pre community in Silver Spring, Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Restrictions, Easements, Charges and Liens.
3. After Labor Day in 1996, the Bel Pre Board of Directors removed the basketball hoops from the basketball court making it impossible to play basketball on the court. The hoop was reinstalled prior to the 1997 summer season.
4. At the end of the 1997 summer season, the Board again removed the basketball hoop. The hoop has not been reinstalled.

CONCLUSIONS OF LAW

1. The Bel Pre Recreational Association Articles of Incorporation, Bylaws, and Declaration of Covenants, Restrictions, Easements, Charges and Liens are valid and enforceable documents. Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992).
2. Judicial review of a board of directors' business decisions is precluded absent a showing of fraud or bad faith. Black v. Fox Hills North Community Association 90 Md. App. 75, 82 (1992).

DISCUSSION

Mr. Ramsay has spent considerable time, energy and effort in his attempt to have the basketball hoops reinstalled for what he views is the benefit of the community. He organized exhibits, photographs, statements of witnesses, even a report on crime statistics in the Bel Pre neighborhood. He filed numerous documents and pieces of correspondence with the

Commission⁵ and made a heartfelt presentation to the panel.

However, the issue before the commission is a simple one – did the Bel Pre Board of Directors have the authority to remove the basketball hoops, and was their decision arbitrary and capricious. As discussed below, the Board was well within its authority to remove the backboards and they were not arbitrary and capricious in their decision making process.

The Commission's role is not to determine if the Board of Directors made the best decision or even to determine if it made the correct decision but only to determine if the Board had the legal authority to make the decision and it was not arbitrary and capricious in its decision making process. First, in reaching its decision, there is ample evidence in the record demonstrating that the Board deliberated the question, investigated alternatives, sought input from the members and ultimately made a difficult decision. The decision was not arbitrary and capricious.

Much of Mr. Ramsay's argument focused on the reasons why the Board should reopen the basketball court. Mr. Ramsay also discussed what he believes is the controlling provision of the governing documents.

In order to preserve and enhance the property values and amenities of the Community, the Common Areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. Further, it shall be an express affirmative obligation of the Association to keep the swimming pool . . . open

Declaration of Covenants, Article IV, Section 2(b). Mr. Ramsay reads this provision in isolation and attempts to impose an affirmative obligation on the Board to keep every facility, including the basketball operating ad infinitum.

The Board, however, took a broader view, reading the provision within the context of the

⁵ Mr. Ramsay filed documents with the commission after the hearing on August 14, 2002. The record closed at the end of the hearing and this filing has not been reviewed by the panel nor is it included in the record of the case.

entire set of governing documents. The Board relies on the Articles of Incorporation for the authority to close the basketball court. The first enumerated purpose of the corporation is “[t]o promote the health, safety and welfare of the residents of ‘Bel-Pre.’” Articles of Incorporation, Third Article ¶ A.

The Board weighted the question, examined alternatives and ultimately decided that the safety of residents living in close proximity to the basketball court outweighed the communal rights to have a basketball court in their community. Mr. Ramsay sees this decision as error. However, that is not the question before the commission.

The Board faced considerable criticism, and potential legal action, for its decision, no matter which decision it made. If the Board kept the basketball court operational, the residents who were subjected to the disturbing activities of the basketball players could allege a failure to maintain the “health, safety and welfare of the residents” as required by the Articles of Incorporation. By closing the basketball court, the Board faced allegations of failure to enforce the Declaration. It was a difficult choice for the Board.

This is the quintessential application of the “business judgment rule.” “The ‘business judgment’ rule . . . precludes judicial review of a legitimate business decision of an organization, absent fraud or bad faith.” Black v. Fox Hills North Community Association 90 Md. App. 75, 82 (1992). The rationale for this rule is that:

[a]lthough directors of a corporation have a fiduciary relationship to the shareholders, they are not expected to be incapable of error. All that is required is that persons in such positions act reasonably and in good faith in carrying out their duties Courts will not second-guess the actions of directors unless it appears that they are the result of fraud, dishonesty or incompetence.

NAACP v Golding, 342 Md. 663, 673 (1996). There is a “presumption that directors of a corporation acted in good faith and in the best interest of the corporation.” Whittman v. Crooke, 120 Md. App. 369, 376 (1998).

Mr. Ramsay believes the Board erred in closing the basketball court but nowhere did he even allege “fraud, dishonesty or incompetence” on the part of the Board, never mind actually proving it. It was Mr. Ramsay’s burden to overcome the presumption that the Board’s

actions were proper. He failed to meet his burden. This panel will not second-guess the Board's decision to close the basketball court.

Because the Board's decision to close the basketball court is sustained, Mr. Ramsay suffered no damages. Therefore, his request for money damages is denied.

ORDER

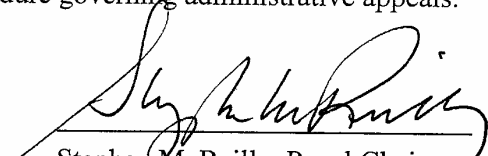
In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

The complaint filed by Raymond Ramsay seeking to have Bel Pre reinstall basketball hoops is hereby dismissed, with prejudice.

Each of Mr. Ramsay's numerous motions has either been addressed during the hearing or rendered moot by this decision.

The foregoing was concurred in by panel members Perkins, Leeds and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership
Communities